

REMARKS

Reconsideration of the above-identified application in view of the following remarks is respectfully requested.

Claims 16-20 have been rejected as being directed to non-statutory subject matter. Claim 16 has been amended to overcome this rejection.

Claims 1-13 have been rejected as anticipated by Tsutsumi et al., US 2003/0078034. Claims 14 and 16-20 have been rejected as unpatentable over Tsutsumi et al. in view of Dorenbosch et al., US 2003/0235184. Claim 15 has been rejected as unpatentable over Tsutsumi et al. in view of Mercer, US 2004/0198322.

The Examiner's communication of October 10, 2006, together with the references cited therein, have been given careful consideration. After such consideration, and in an earnest effort to complete the prosecution of this application, the Applicants have set down the following arguments in support of the patentability of claims 1-20.

To assist the Examiner in reconsidering this application, the following is a presentation based on the language employed

in claim 1 when read on the embodiment presented in Figs. 1-2 herein. Amended claim 1 recites a communication system including a data concentrator computer, a mobile gateway device, a first mobile data acquisition device, and a second mobile data acquisition device. The mobile gateway device, separate and distinct from said data concentrator computer, communicates with the data concentrator computer. The first mobile data acquisition device communicates with the mobile gateway device. The second mobile data acquisition device communicates with the mobile gateway device. The mobile gateway device allows direct communication between the first and second mobile data acquisition devices, through broadcast messages from the mobile gateway device to the first and second mobile data acquisition devices, without communication with the data concentrator computer (Fig. 1; Specification, pages 14-21, Table 1).

Tsutsumi et al. and the other art of record do not disclose a mobile gateway device, a mobile gateway device separate and distinct from a data concentrator computer, or direct communication between the first and second mobile data

acquisition devices, through broadcast messages from the mobile gateway device to the first and second mobile data acquisition devices, without communication with the data concentrator computer. The communications device 32 and the address determining device 43 of Tsutsumi et al. are both part of the non-mobile network device 16 (Tsutsumi et al., page 5, para. 54).

Claim 1, as well as claims 2-10 which depend from claim 1, are in condition for allowance.

To assist the Examiner in reconsidering this application, the following is a presentation based on the language employed in claim 11 when read on the embodiment presented in Figs. 1-2 herein. Amended claim 11 recites a communication system including a data concentrator computer, a mobile mailbox, a first mobile data acquisition device, and a second mobile data acquisition device. The mobile mailbox, separate and distinct from said data concentrator computer, communicates with the data concentrator computer. The first mobile data acquisition device communicates with the mobile mailbox. The second mobile data acquisition device communicates with the mobile

mailbox. The mobile mailbox allows peer to peer communication between the first and second mobile data acquisition devices, through broadcast messages from the mobile mailbox to the first and second mobile data acquisition devices, without communication with the data concentrator computer (Fig. 1; Specification, pages 14-21, Table 1).

Tsutsumi et al. and the other art of record do not disclose a mobile mailbox, a mobile mailbox separate and distinct from a data concentrator computer, or direct communication between the first and second mobile data acquisition devices, through broadcast messages from the mobile mailbox to the first and second mobile data acquisition devices, without communication with the data concentrator computer. The communications device 32 and the address determining device 43 of Tsutsumi et al. are both part of the non-mobile network device 16 (Tsutsumi et al., page 5, para. 54).

Claim 11, as well as claims 12-15 which depend from claim 1, are in condition for allowance.

To assist the Examiner in reconsidering this application, the following is a presentation based on the language employed in claim 16 when read on the embodiment presented in Figs. 1-2 herein. Amended claim 16 recites a computer program product for communication between a plurality of mobile devices. The computer program product is stored by a tangible medium. The computer program product includes: a first instruction for activating a first mobile device; a second instruction for requesting a roll call from a gateway device by the first mobile device; a third instruction for broadcasting a please identify message to a second mobile device and a third mobile device; and a fourth instruction for providing peer to peer communication between the first mobile device and the second and third mobile devices through broadcast messages from a mobile mailbox to the first and second mobile devices, the peer to peer communication occurring without communication with a non-mobile data concentrator computer (Fig. 1; Specification, pages 14-21, Table 1).

Tsutsumi et al. and the other art of record do not disclose a mobile mailbox, a mobile mailbox separate and

distinct from a data concentrator computer, or direct communication between the first and second mobile data acquisition devices, through broadcast messages from the mobile mailbox to the first and second mobile data acquisition devices, without communication with the data concentrator computer. The communications device 32 and the address determining device 43 of Tsutsumi et al. are both part of the non-mobile network device 16 (Tsutsumi et al., page 5, para. 54).

Claim 15, as well as claims 17-20 which depend from claim 16, are in condition for allowance.

Additionally, unamended claims 14-20 have been rejected as obvious of Tsutsumi et al. in view of Dorenbosch and Mercer (claim 15). The following discussion addresses the inapplicability of obviousness rejections to computer algorithm subject matter.

The M.P.E.P. sets forth the following criteria for an obviousness rejection under 35 U.S.C. §103:

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.

See, MPEP §706.02(j).

The structure of a computer, or computer-implemented system, programmed to carry out an algorithm is limited by the disclosed algorithm. See WMS Gaming Inc. v. Int'l Game Tech., 184 F.3d 1339, 1348 (Fed. Cir. 1999). A new machine (a special purpose computer) is created when a general purpose computer is programmed to carry out an algorithm for performing one or more particular functions. Id. citing In Re Alappat, 33 F.3d 1526, 1545 (Fed. Cir. 1994) (*en banc*). When a general purpose computer is programmed to perform a particular function by using a discovery not specified in the prior art, the resulting device or system would not be obvious under 35 U.S.C. §103 "because one not having knowledge of the [inventor's] discovery simply would not know what to program

the computer to do." See In re Prater, 415 F.2d 1393, 1397-98 (CCPA 1969).

For an obviousness rejection under 35 U.S.C. §103, the prior art must be analyzed at the time the invention was made. The use of the teachings of the present invention to find obviousness is impermissible.

Obviousness must not be read into an invention on the basis of applicant's own statements; that is, the prior art must be viewed without reading into that art the applicant's teachings. The issue, then, is whether the teachings of the prior art would, in and of themselves and without the benefits of appellant's disclosure, make the invention obvious.

In Re Spinnoble, 160 USPQ 237, 243 (CCPA 1969) (emphasis in original). Accordingly, the Examiner must consider only the teachings of the prior art references.

The features of claims 14-20 are not taught by Tsutsumi et al. According to WMS Gaming Inc., 184 F.3d at 1348, the systems and computer program products of claims 14-20 define a communication algorithm. Since Tsutsumi et al. admittedly fails to teach or suggest all of the features of claims 14-20, it is respectfully submitted that it would not

obvious to one of ordinary skill in the art to combine Tsutsumi et al. with the other references.

Additionally, when an algorithm is not taught or suggested by a prior art reference, one of ordinary skill in the art would not know what to program a computer to do. See e.g., In re Prater, 415 F.2d at 1397-98. Thus, a new system or computer program product has been created when a computer is programmed to carry out an algorithm to perform a particular function, as in claims 14-20. WMS Gaming Inc., 184 F.3d at 1348. Therefore, it is respectfully submitted that it would not have been obvious for one of ordinary skill in the art to modify Tsutsumi et al. as suggested by the Office Action. Thus, it is respectfully submitted that the rejection of claims 14-20 as obvious is improper.

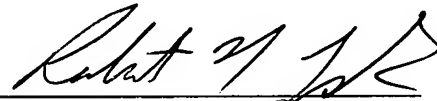
Furthermore, in rejecting claims 14-20 as obvious, it is respectfully suggested that improper hindsight has been used. Tsutsumi et al. fails to teach or suggest the features of claims 14-20. Thus, without reference to the teachings of the disclosure of the present invention, one of ordinary skill in

the art would not have the requisite knowledge to modify
Tsutsumi et al. as suggested by the Office Action.

According to In Re Sponnoble, 160 USPQ at 243 (CCPA
1969), such hindsight is impermissible. Therefore, it is
respectfully submitted that for this further reason, the
rejection of claims 14-20 is improper.

Please charge any deficiency or credit any overpayment in
the fees for this election to our Deposit Account No. 20-0090.

Respectfully submitted,



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